

# Department of Public Advocacy

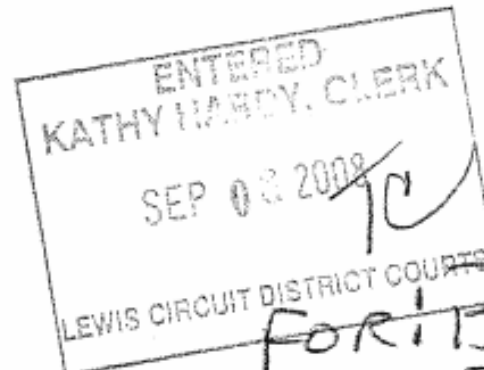
Fiscal Status  
January 2009

COMMONWEALTH OF KENTUCKY  
LEWIS CIRCUIT COURT  
CASE # 08-CR-063

COMMONWEALTH OF KENTUCKY

VS.

Ronnie Carrington



**SHOW CAUSE ORDER -**

FOR: BRIAN Newlett  
- Ed monlan

YOU ARE ORDERED to appear in the LEWIS CIRCUIT COURT, LEWIS COUNTY JUSTICE CENTER, VANCEBURG, KENTUCKY on Oct 3, 2008 @ 1:00 a.m./p.m. to SHOW CAUSE, if any you have, why you should not be held in contempt of court for failure to hire conflict Counsel.

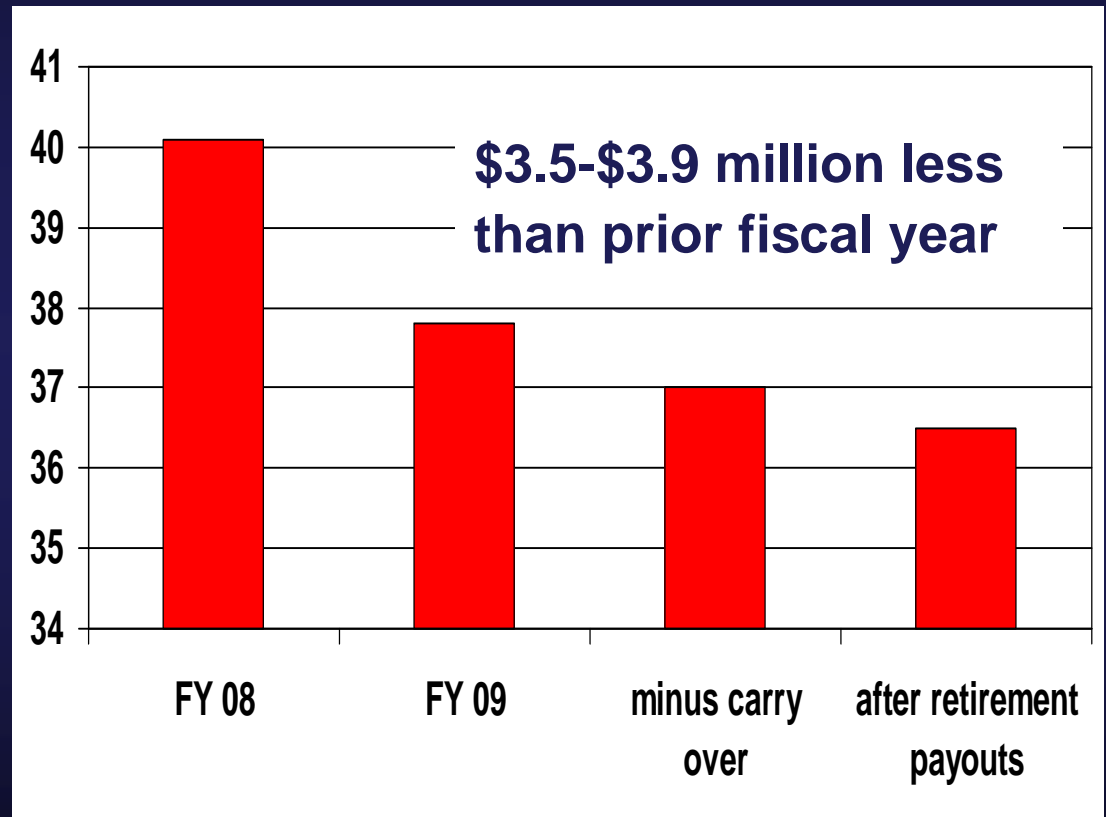
Failure to appear in court as ordered can result in the issuance of a **BENCH WARRANT** for your arrest.

  
\_\_\_\_\_  
ROBERT B. CONLEY, JUDGE  
20<sup>TH</sup> JUDICIAL DISTRICT

THE UNDERSIGNED CLERK DOES HEREBY  
CERTIFY THAT A TRUE AND CORRECT

# FY 09 Fiscal Status

- Last fiscal year (FY 08) DPA's budget was \$40.1 million
- DPA began the current fiscal year (FY 09) with a budget of \$ 37.8 million, a \$2.3 million difference
- DPA carried over \$800,000 in bills from the last fiscal year, \$3.1 million difference
- Since July 1, 2008 25 people retired, payouts are unfunded, likely between \$400,000 - \$800,000



# Responsible management

Reduced services to stay within  
the funds provided DPA and meet  
ethical workloads

# Declaratory Judgment Action

- Court was asked to decide whether DPA can respond to a cut in funding with a cut in services
- September 2008 DPA temporarily ordered to represent all clients without any service reductions since legislature will meet before DPA runs out of money
- DPA is complying with the order

COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION II  
CIVIL ACTION NO. 08-CI-1094

ERWIN LEWIS, et al.

vs.

TEMPORARY INJUNCTION

TODD HOLLENBACH, IV,  
KENTUCKY STATE TREASURER,  
et al.

RESPONDENTS

\*\*\*\*\*

This matter is before the Court upon a hearing held on August 26, 2008.

Respondent Todd Hollenbach, IV, Kentucky State Treasurer, and Jonathan Miller, Kentucky Secretary of Finance and Administration (jointly referred herein as the "Executive Branch Respondents"), have moved this Court for a Temporary Injunction pursuant to Rule 65.04 of the Kentucky Rules of Civil Procedure (CR), enjoining Petitioners, Erwin W. Lewis, the Department of Public Advocacy (DPA), Daniel T. Goyette, the Louisville and Jefferson County Public Defender Corporation, Frank Mascagni, III, (hereinafter collectively referred to as "Petitioners"), and any person acting under their authority or in active concert or participation with them from implementing or continuing to implement the Service Reduction Plans described in Petitioners' Petition for Declaratory Judgment.

After considering all the evidence submitted and reviewing the arguments of each party, the Court grants the Executive Branch Respondents' Motion, issues the following findings of fact and conclusions of law in accordance with CR 65.04 (5), and enjoins the Petitioners as set forth herein.

ENTERED  
SEP 19 2008  
FRANKLIN CIRCUIT COURT  
SALLY HUNTER

# Public Defense

Constitutional Mandate

"...in a case being prosecuted in a Kentucky court the state either must see that the defendant is provided counsel or it cannot proceed with the prosecution."

Jones v. Commonwealth,  
457 S.W.2d 627, 631-32 (Ky. 1970)

# Public Safety



# DPA's Responsibility

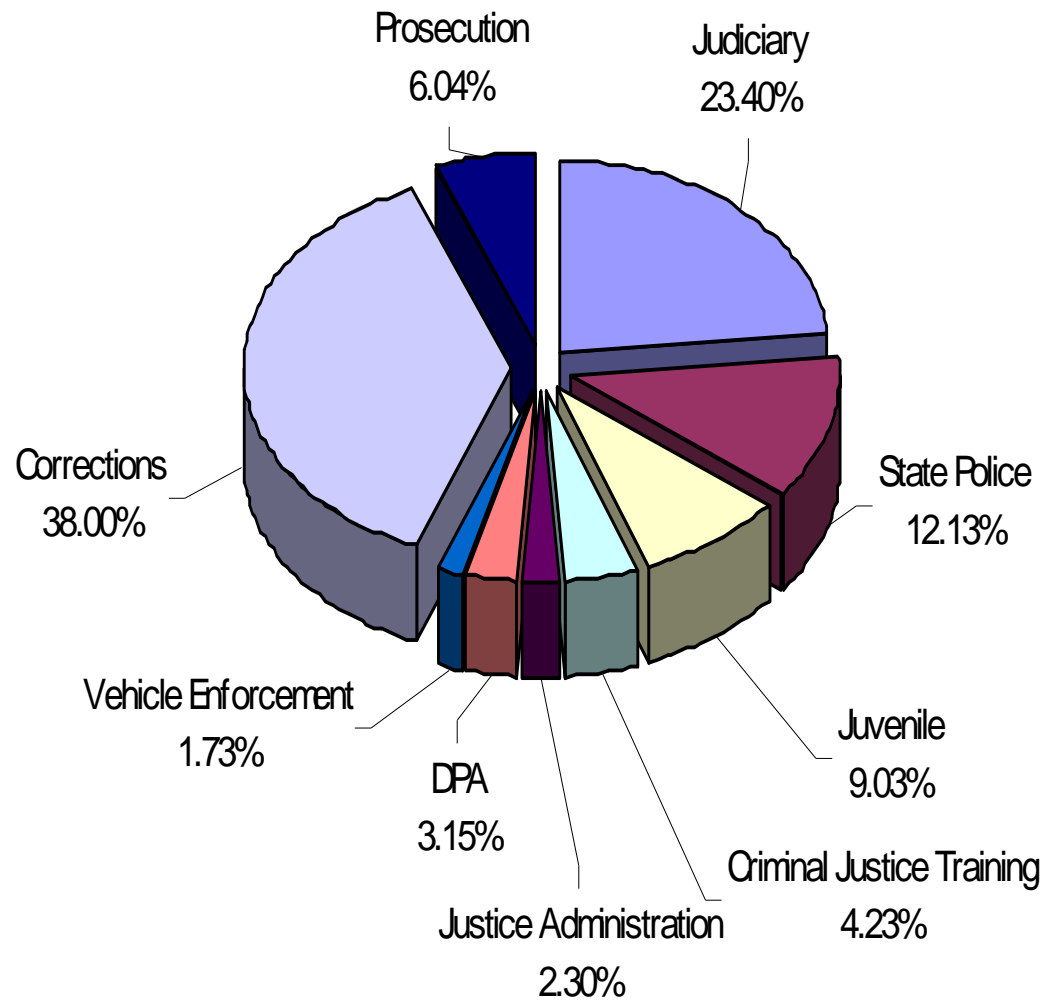
Constitutional mandate  
to provide counsel to persons facing loss  
of liberty or life unable to afford counsel

6<sup>th</sup> Amendment and Section 11

# History of DPA

- *Gideon v. Wainwright*, 372 U.S. 335 (1963)  
The federal constitutional requirement: if a state seeks to take away a person's liberty through a criminal prosecution, it must provide an attorney to those too poor to hire their own
- *Jones v. Commonwealth*, 457 S.W.2d 627, 631-32 (Ky. 1970) "...in a case being prosecuted in a Kentucky court the state either must see that the defendant is provided counsel or it cannot proceed with the prosecution."
- *Bradshaw v. Ball*, 487 S.W.2d 294 (1972)  
No attorney can be forced to provide public defense without reasonable compensation
- 1972: Office of the Public Advocate created
- 2005: Completion of Full-Time System

## 2009 Criminal Justice System



# Funding per case

- Colorado: \$889
- Ohio: \$719
- Alabama: \$603
- Iowa: \$570
- West Virginia: \$513
- Massachusetts: \$468
- North Carolina: \$435
- Missouri: \$384
- Maryland: \$306
- Virginia: \$250
- Kentucky: \$254 (2007)

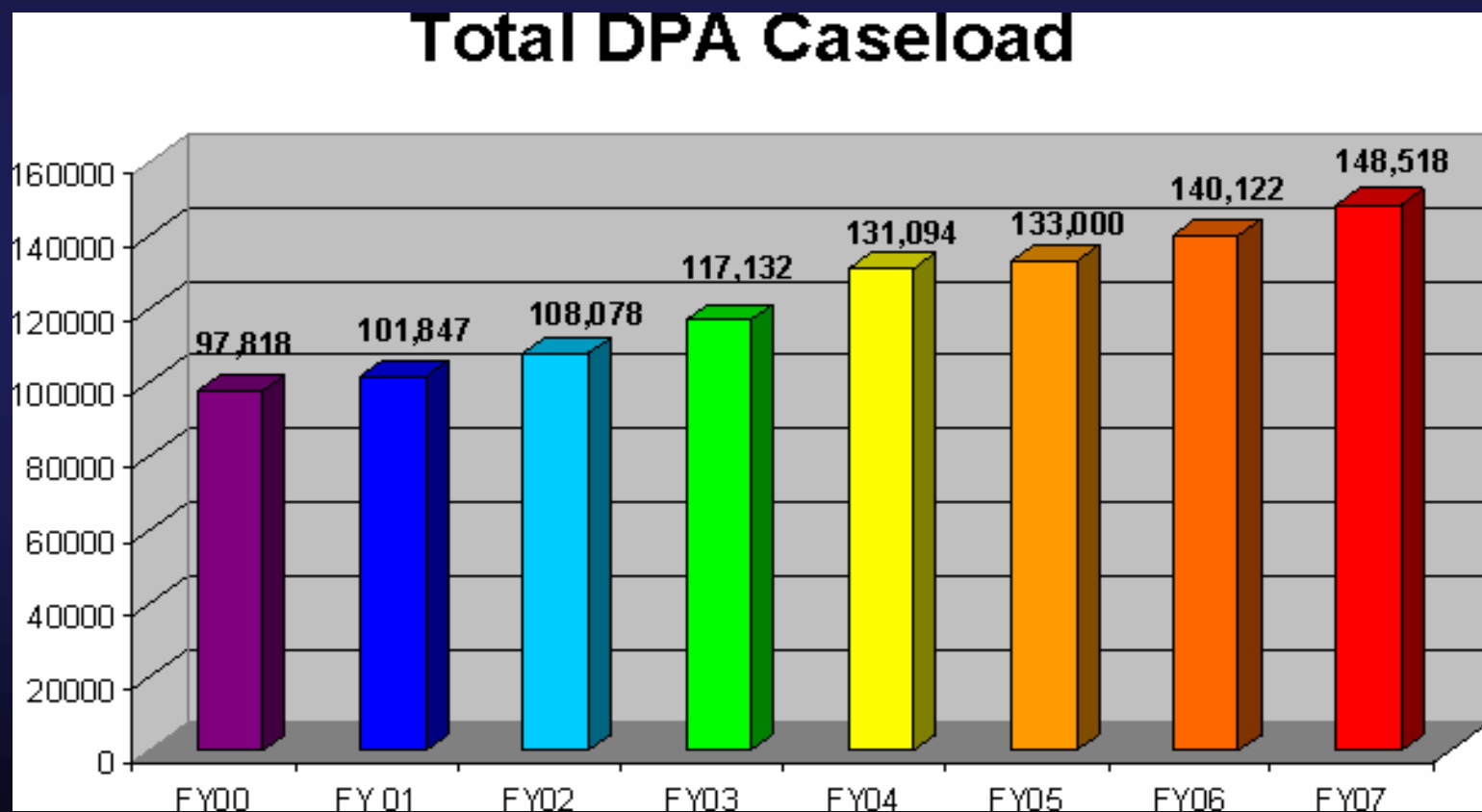
(All figures 2002 except Kentucky) (source: The Spangenberg Group)

# Funding per capita

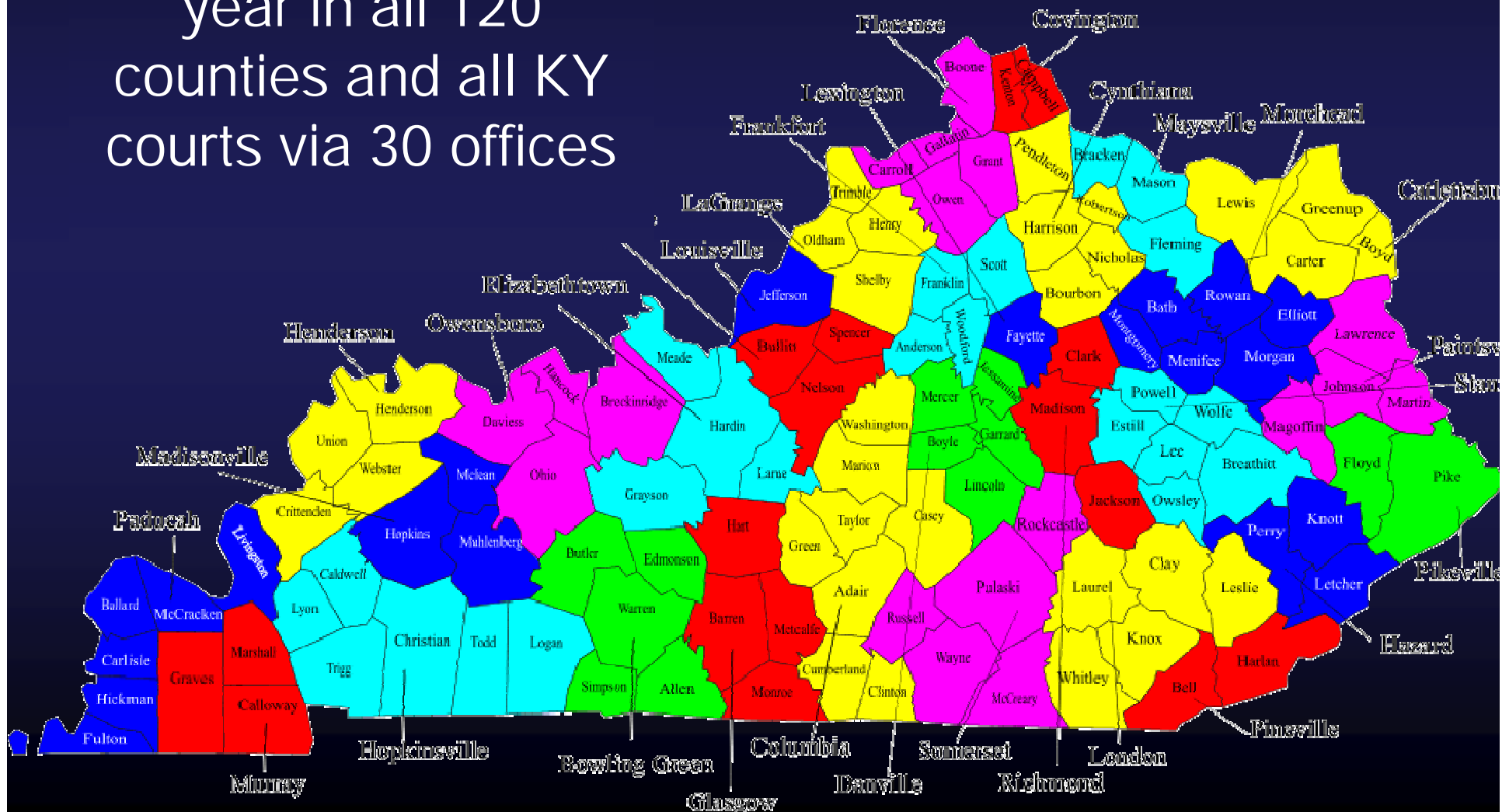
- Oregon: \$23.75
- Massachusetts: \$18.70
- West Virginia: \$17.21
- Wisconsin: \$15.32
- Florida: \$11.50
- Virginia: \$10.79
- Alabama: \$10.52
- Ohio: \$9.28
- North Carolina: \$9.17
- Kentucky: \$8.97 (2007)
- Louisiana: \$7.57

(All figures FY05 except for Kentucky) (Source: The Spangenberg Group)

# Caseloads have risen 52% since 2000



Provide  
representation in  
140,000+ cases per  
year in all 120  
counties and all KY  
courts via 30 offices



# Responsible management

DPA has taken action  
to reduce costs while still  
meeting the Court's Order



# Cost Reductions

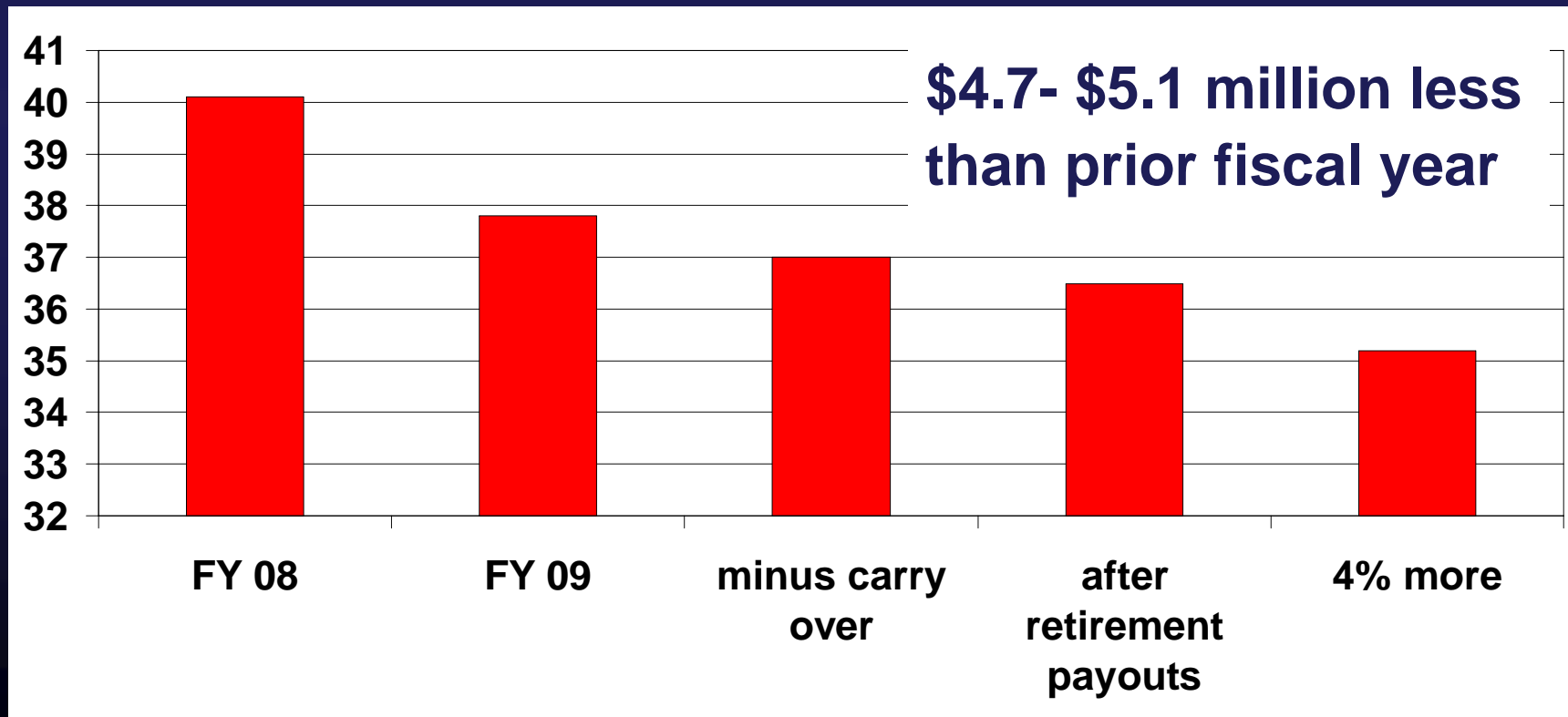
- Hiring freeze
- We are delaying filling positions across the state
  - Attorneys without support staff
- As people retire either not filled the position or if it was an essential position necessary to comply with the court order we have filled the position with an employee paid less
- Drastically reduced other costs - education, publications, no out-of-state travel, library costs, not replacing computers unless no other choice

Almost all of DPA funds  
are in personnel and fixed costs

DPA will likely run out of money in  
May

# Impact of more cuts

- December 2008 DPA was informed it would be subject to a 4% reduction of funding



# Contempt of Court

<b>COMMONWEALTH OF KENTUCKY FRANKLIN CIRCUIT COURT DIVISION II CIVIL ACTION NO. 08-CI-1094</b>		<b>ENTERED</b> SEP 19 2008 FRANKLIN CIRCUIT COURT <del>SALLY HUNTER</del>
<b>ERWIN LEWIS, et al.</b>		
vs.	<u><b>TEMPORARY INJUNCTION</b></u>	
<b>TODD HOLLENBACH, IV, KENTUCKY STATE TREASURER, et al.</b>		<b>RESPONDENTS</b>
*****		
<p>This matter is before the Court upon a hearing held on August 26, 2008.</p> <p>Respondent Todd Hollenbach, IV, Kentucky State Treasurer, and Jonathan Miller, Kentucky Secretary of Finance and Administration (jointly referred herein as the "Executive Branch Respondents"), have moved this Court for a Temporary Injunction pursuant to Rule 65.04 of the Kentucky Rules of Civil Procedure (CR), enjoining Petitioners, Erwin W. Lewis, the Department of Public Advocacy (DPA), Daniel T. Goyette, the Louisville and Jefferson County Public Defender Corporation, Frank Mascagni, III, (hereinafter collectively referred to as "Petitioners"), and any person acting under their authority or in active concert or participation with them from implementing or continuing to implement the Service Reduction Plans described in Petitioners' Petition for Declaratory Judgment.</p> <p>After considering all the evidence submitted and reviewing the arguments of each party, the Court grants the Executive Branch Respondents' Motion, issues the following findings of fact and conclusions of law in accordance with CR 65.04 (5), and enjoins the Petitioners as set forth herein.</p>		

# Workloads

10 offices have caseloads of  
550 or higher

Covington

Cynthiana

Somerset

Lexington

Danville

Louisville

Bell County

Bullitt County

Boyd County

Madisonville

# ABA Formal Opinion 06-441 (2006)

"All lawyers, including public defenders and other lawyers who, under court appointment or government contract, represent indigent persons charged with criminal offenses, must provide competent and diligent representation.

If workload prevents a lawyer from providing competent and diligent representation to existing clients, she must not accept new clients."

# Ethical Responsibilities

Fixed  
Budget



No control  
of caseload

Court's Order